

YOUNG ELECTRIC, INC.

CONTRACT NO. V611C-147

**VABCA-4659**

VA MEDICAL CENTER  
MARLIN, TEXAS

**Thomas J. Kelleher, Esq.**, Smith, Currie & Hancock, for the Appellant.

**Stacey North Willis, Esq.**, Trial Attorney and **Phillipa L. Anderson, Esq.**, Deputy Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

### **ORDER DISMISSING APPEAL**

1. The Board, in its June 9, 1995 NOTICE OF DOCKETING AND ORDER TO SHOW CAUSE, noted that the Appellant filed a MOTION TO DISMISS FOR LACK OF JURISDICTION informing the Board that it was filing a "protective appeal" from a Settlement by Determination which contained final decision language. In an accompanying affidavit, Jack Kaufmann, Vice President of Young Electric, stated that "[a]t no time did he or anyone acting on behalf of Young indicate to the Government that the matter had reached an impasse" or request a final decision concerning the Settlement by Determination. Appellant further stated that "[n]o certification of claim has been furnished" and that it was "totally surprised by the issuance of the final decision."
2. The "protective" appeal of Young Electric, Inc., was received and docketed on June 7, 1995, and assigned docket number VABCA-4659. We granted the Government until June 19, 1995, to SHOW CAUSE why this appeal should not be dismissed for lack of jurisdiction. In its response, dated June 19, 1995, the Government has informed the Board that it has "no objection to Appellant's Motion to Dismiss VABCA No. 4659."
3. The Contract Disputes Act, 41 U.S.C. §§ 601-613 sets forth the basis for jurisdiction by this Board over claims made by a Contractor against the Government. 41 U.S.C. § 605 (a) provides that the statutory prerequisite for invoking the jurisdiction of this Board is the submission of a "claim" by the Contractor which must "be in writing and shall be submitted to the contracting officer for a decision." In the absence of an underlying claim on which to base a final decision the Board is without jurisdiction. **George Hyman Construction Co.**, VABCA No. 3078, 90-1 BCA ¶ 22,551; **Southland Construction Co.**, VABCA Nos. 2279, 2544, 89-1 BCA ¶ 21,271 at 107,274-75.
4. Because there has been no demand for a final decision, we conclude that we are without jurisdiction to consider the matter. Accordingly, the appeal of **Young Electric, Inc.**, VABCA-4659 is hereby dismissed for lack of jurisdiction pursuant to Board Rule 5.

**IT IS SO ORDERED**

**DATE: June 20, 1995**

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GUY H. MCMICHAEL III  
Chief Administrative Judge

Panel Chairman

We concur:

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DAN R. ANDERS  
Administrative Judge

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MORRIS PULLARA, JR.  
Administrative Judge